

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4379 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
KAALPANABEN NARAYANBHAI PATRA W/O OF DETNUE N D PATRA

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MR NM KAPADIA for Petitioner

MR NIGAM SHUKLA, A.P.P. for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/10/96

ORAL JUDGEMENT

nThrough this Special Civil Application, the wife of the detenu has sought to challenge the detention order dated 4th March, 1996 passed by the Comissioner of Police Surat City, detaining detenu (petitioner's husband) under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985( "PASA Act" for short). The detention order dated 4th March, 1996 was executed on 17th April, and since then the detenu is under detention lodged at District Prison,, Bhavnagar.

The present Special Civil Application was filed on 26th, June 1996 and on 27th June, 1996 rule returnable by 13th July, 1996 was issued on behalf of the respondents. The affidavit-in-reply dated 10th October, 1996 has been filed seeking to support the detention. In this affidavit-in-reply, it has been stated that the detenu was a bootlegger as statements had been made by certain witnesses against the detenu's activities and looking to the criminal record of the detenu, the detention order has been passed after considering all the relevant factors.

The grounds of detention show that the detenu has become a problem for the public order on account of his antisocial activities and the running of the Adda near his residence where the liquor is consumed as a part of his business. The detenu was engaged in violence and other criminal activities. A reference has been made to the incidents dated 19th June, 1995, 26th June, 1995 and 30th June, 1995 on the basis of which criminal cases were registered against the detenu under the Prohibition Act. Reference has then been made to the incidents dated 10th October, 1995, 3rd December, 1995 and 26th January, 1996 and the statements made by the witnesses against the detenu with regard to his antisocial activities running the liquor Adda at Punitnagar, Gujarat Housing Board, Pandesara. The witnesses have stated that the detenu beat them publicly using hockeystick, swords etc. On account of his antisocial activities and use of weapons, the larri gallawallas had to stop their business. The witnesses have requested to keep their identity secret and accordingly the provisions of Section 9(2) of the PASA Act have been invoked. The detaining authority has satisfied himself that the detenu was a bootlegger and had become a problem for the public order. The detenu's activities were injurious to public health and to prevent him from continuing his antisocial activities, it was necessary to detain him and accordingly the detention order was passed.

Although the detention order has been challenged on more than one ground, the learned Counsel for the detenu has laid stress on the ground that the allegations as has been levelled against the detenu even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials relied upon against the detenu by the detaining authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3874/1996 in which a considered view has been taken on the basis of the ratio decidendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 4th March, 1996 passed by the Commissioner of Police, Surat City is hereby quashed and set aside. The detention of the detenu is declared to be illegal. The respondents are directed to release the detenu and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

\*\*\*\*\*

sf-mrc